

**SECTION D**  
**GENERAL TERMS AND CONDITIONS (STATE & LOCAL GOVERNMENTS)**

**1. FEDERAL STATUTES AND REGULATIONS.** Federal statutes and regulations to include, but not limited to, 32 CFR 33 and DoD 3210.6-R<sup>1</sup>, take precedence over all terms and conditions of this Agreement.

**2. ADMINISTRATION AND COST PRINCIPLES.** Applicable to this award, and incorporated herein by reference, are the requirements of the following Office of Management and Budget (OMB) Circulars<sup>2</sup>, as of the effective date of the award:

(a) OMB A-87 – “*Cost Principles for State, Local and Indian Tribal Governments*” (Revised 04 May 1995, as further amended on 29 August 1997)

(b) OMB A-102 – “*Grants and Cooperative Agreement with State and local Governments*” (Revised 07 October 1994, as further amended on 29 August 1997)

(c) OMB A-133 – “*Audits of States, Local Governments, and Non-Profit Organizations*” (Revised 24 June 1997)

**3. CERTIFICATIONS.** By acceptance (signing) of this award or by accepting funds under the award, the Recipient thereby makes the following certifications:

(a) Appendix A to 32 CFR Part 25 regarding debarment, suspension, and other responsibility matters;

(b) Appendix C to 32 CFR Part 25 regarding drug-free workplace requirements; and,

(c) Appendix A to 32 CFR Part 28 regarding lobbying.

**4. AWARD PROVISIONS FOR NATIONAL POLICY REQUIREMENTS.** By acceptance (signing) of this award, or by accepting funds under the award, the Recipient assures that it will comply with applicable provisions of the following national policy requirements (as applicable) with respect to the prohibition of discrimination:

(a) On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DoD regulations at 32 CFR Part 195;

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<sup>1</sup> DoD Grant and Agreement Regulations at <http://www.dtic.mil/whs/directives/corres/html/32106r.htm>

<sup>2</sup> OMB Circulars/Forms at <http://www.whitehouse.gov/omb/grants/index.html>

(b) On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 [3 CFR, 1964-1965 Comp.p.229], as implemented by Department of Labor Regulations at 41 CFR Part 60];

(c) On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. § 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR Part 90; and,

(d) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), implemented by Department of Justice regulations at 28 CFR Part 41 and DoD regulations at 32 CFR Part 56.

**5. RETENTION AND EXAMINATION OF RECORDS.** Retention and access requirements for records shall be as set out at 32 CFR 33.42.

**6. ENVIRONMENTAL PROTECTION.** By acceptance (signing) of this Agreement or accepting funds under this Agreement, the Recipient agrees to comply with applicable Federal environmental laws in undertaking activities on the ACES that are not covered by the Agreement, including:

**6.1.** The Recipient agrees that its performance under this Agreement, with Equivalent State Compliance, will comply with all applicable Federal, State or local environmental laws and regulations, including but not limited to: the requirements of the Clean Air Act (42 U.S.C § 7401-7671q.) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. § 1318), which relate generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder; the Resource Conservation and Recovery Act of 1976 ("RCRA", 42 U.S.C. § 6901, et seq.); the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA," 42 U.S.C. § 9601, et seq.); and the National Environmental Policy Act of 1969 ("NEPA," 42 U.S.C. § 4321, et seq.); the Clean Water Act (33 U.S.C. 1251-1387); and 40 CFR Part 32.

(a) The Recipient will comply with all existing environmental permits, and the Parties will cooperate with each other in preparation of future environmental permits, as permitted by law, required for the Recipient's compliance under this Agreement.

(b) The Government's rights under this Agreement specifically include the right for Government officials to inspect for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections.

(c) The Recipient understands and agrees that there may be future Government activities in support of environmental cleanup or disposal operations for Army Retained Conditions. The Recipient agrees to cooperate to the extent necessary in support of these operations, and will not interfere with or hinder any such operations by the Government.

**6.2.** It will identify to the Grants Officer any impact on flood-prone areas, and provide help that the Grants Officer may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas.

**6.3.** It will identify to the Grants Officer any impact on underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and assist the Grants Officer in compliance with the Safe Drinking Water Act of 1974 (42 U.S.C. 300h-3).

## 7. CHANGES.

**7.1. Relation to Cost Principles.** The cost principles set forth in OMB A-87 – “*Cost Principles for State, Local and Indian Tribal Governments*”, contain requirements for prior approval of certain types of costs. These prior approval requirements apply to all Federal Assistance instruments (and subgrants) entered into by the Army. In addition to the prior approvals required under OMB A-87, capital expenditures for equipment, including replacement equipment, other assets, and improvements which materially increase the value or useful life of equipment or other capital assets are allowable as direct costs.

**7.2. Budget Changes.** Pursuant to 32 CFR 33.30, the Recipient is permitted to re-budget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. Request for prior approval shall be in the same budget format the Recipient used in its application and shall be accompanied by a narrative justification for the proposed revision. The Recipient shall obtain written approval of the Grants Officer prior to initiating:

- (a) Any revision which would result in additional Government funding; or
- (b) Cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects functions, or activities which exceed or are expected to exceed ten (10) percent of the current total approved budget.

**7.3. Programmatic or Scope Changes.** Regardless of whether there is an associated budget change requiring approval, the following changes require prior written approval:

- (a) Need to extend the period of availability of funds; or
- (b) Changes to the TSRS incorporated herein at Section E, Attachment E.1.
- (c) Modification to the requirements and/or funding needed for insurance and related liability incorporated herein at Section C.

## 8. ENFORCEMENT AND TERMINATION FOR CONVENIENCE.

**8.1. Remedies for Noncompliance.** The Government’s remedies for noncompliance are as set forth at 32 CFR 33.43(a).

**8.2. Suspension and Termination.** The bases for and effects of suspension and termination are as set forth at 32 CFR Part 33. The Army also explicitly reserves the right to terminate the Agreement if (1) the Army has not approved the Consent Agreement or amendments thereof; or (2) the Early Transfer Property Conveyance is not completed by the negotiated date.

**8.3. Relationship to Debarment and Suspension.** The enforcement remedies identified in this section do not preclude the Recipient from being subject to "Debarment and Suspension" under E.O. 12549.

**8.4. Termination for Convenience.** This Agreement may also be terminated, in whole or in part, only by the Grants Officer with the consent of the Recipient in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated.

**9. DISPUTES AND ALTERNATIVE DISPUTES RESOLUTION (32 CFR 22.815).** Disputes between the Recipient and the Grants Officer shall be resolved by mutual agreement at the Grants Officer's level, to the maximum extent practicable. Disputes are written demands or written assertions by one of the parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of terms, or other relief arising under or relating to the award, including matters in dispute regarding the performance of environmental services under Section C. The dispute shall, at a minimum, contain sufficient information and supporting data to enable the Grants Officer to render an informed decision. Whenever the Recipient submits, in writing, a dispute to the Government, the Grants Officer shall consider the issue(s) and, within 60 calendar days of receipt, either:

(a) Prepare a written decision, which shall include the basis for the decision and shall be documented in the award file; or

(b) Notify the Recipient of a specific date when he or she will render a written decision. The notice shall inform the Recipient of the reason for delaying the decision.

(c) The Recipient shall proceed diligently with performance of the award, to the extent the Grants Officer continues to certify for payment Recipient's funding requests, pending final resolution of any dispute.

**9.1. Alternative Disputes Resolution (ADR).** These procedures include settlement negotiations, mediation, and fact-finding. In the event the Recipient decides to appeal the decision the Recipient is encouraged to enter into ADR procedures with the Grants Officer, as set forth herein:

(a) If the Recipient decides to appeal under ADR, it must within 90 calendar days from the date that it receives the Grants Officer's written decision, mail or otherwise furnish to the Grants Officer notice that an appeal is intended using the ADR procedures herein. The appeal shall include a description of the claim or dispute, reference to the pertinent Agreement terms, and a statement of factual areas of agreement and disagreement.

(b) Within 30 calendar days from the date that the Grants Officer is furnished the Recipient's appeal the Grants Officer shall provide all data, documentation, and pertinent information, required for use on a pending appeal to the Department of the Army, Assistant Chief of Staff for Installation Management.

(c) The Assistant Chief of Staff for Installation Management shall review the facts pertinent to the dispute or secure assistance from legal and other advisors and issue a written decision with supporting rationale.

(d) If the Recipient chooses not to initiate an appeal using ADR procedures, it may initiate such formal claims as are authorized by 28 U.S.C. 1491, or other applicable statutes.

**9.2. Relief.** After exhaustion of available administrative remedies, nothing in Section D.9 would affect the rights of the Recipient to file a claim against the United States seeking relief with regard to funding delays, delays resulting from the Army addressing Army-Retained Conditions or imminent threats, and any additional costs resulting from the Army requiring a remedy is beyond the scope of the proposed activities described in the TSRS Remedial Activities Table as provided in Section C.4.2.2.

**10. RECIPIENT RESPONSIBILITY.** The Recipient has full responsibility for the conduct of the effort supported by this Agreement, in accordance with the Recipient's Application for Federal Assistance (and supporting documentation), and the terms and conditions specified in this Agreement. The Recipient is encouraged to suggest, or propose to discontinue, or modify unpromising efforts.

**11. ACKNOWLEDGEMENT OF SPONSORSHIP.** The Recipient agrees that in the release of information relating to this Agreement, such release shall include a statement to the effect that: (a) the effort is/was sponsored by the Department of the Army, Assistant Chief of Staff for Installation Management; (b) the content of the information does not necessarily reflect the position or policy of the Government; and (c) that no official

endorsement should be inferred. "Information" includes news releases, articles, manuscripts, brochures, advertisements, still and motion pictures, speeches, trade association proceedings, symposia, etc.

**12. SUBCONTRACTS.** Pursuant to 32 CFR 33.36 (a), the Recipient will follow the same policies and procedures it uses for procurements from its non-Federal funds. The Recipient will ensure that every purchase order or other contract includes any clauses required by Federal statutes and Executive Orders and their implementing regulations, as set forth under 32 CFR 33.36 (i) (1) through (13) inclusive.

**13. SUBGRANTS.** The Recipient shall follow State law and procedures when awarding and administering subgrants (whether on a cost-reimbursement or fixed amount basis), pursuant to 32 CFR 33.37 (a) (1) through (4) inclusive.

**14. ALLOWABILITY OF COSTS.** Allowability of costs shall be in accordance with 32 CFR 33.22 and 32 CFR 33.23.

**15. OFFICIALS NOT TO BENEFIT.** No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit arising from it, in accordance with 41 U.S.C. § 22.

**16. CHANGE OF CIRCUMSTANCES.** Each party will promptly notify the other party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect such party's ability to carry out any of its obligations under this Agreement.

**17. PROTECTION OF HISTORIC RESOURCES.** The Recipient agrees to comply with Section 106 of the National Historical Preservation Act of 1966 (16 U.S.C. 470 (f)), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR 800 and E.O. 11593.

**18. PROTECTION OF THREATENED AND ENDANGERED SPECIES AND NATURAL HABITAT.**

The Recipient agrees that its performance under this Agreement will comply with all applicable Federal, State, and local laws and regulations related to the protection of threatened and endangered species and natural habitat, if any, included but not limited to the requirements of the Endangered Species Act of 1973 (16 U.S.C. § 1531, et seq.). The Recipient is aware of and understands its obligations to protect and conserve threatened and endangered species and to take all reasonable precautions to protect trees and natural habitat during maintenance and future operations and to restore the ground surface after completion of maintenance or other operations as near to its former condition as may be possible for protection against erosion.

**19. HATCH ACT. (APPLICABLE ONLY IF FEDERAL FUNDS WILL BE PROVIDED FOR STATE/LOCAL GOVERNMENT PERSONNEL)** The Recipient agrees to comply with the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), as implemented by the Office of Personnel Management at 5 CFR Part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or in part with Federal funds.

**20. AFTER THE AWARD REQUIREMENTS.**

(a) Closeout, subsequent adjustments, continuing responsibilities, and collection of amounts due are subject to the requirements in 32 CFR 33.50 through 33.52.

(b) Pursuant to 32 CFR 33.50, the Recipient shall submit, within 90 calendar days after the date of expiration of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Grants Officer may approve extensions when requested by the Recipient.

**21. MODIFICATION OF AGREEMENT.** The only method by which the Agreement can be modified is through formal, written modification, initiated by the Grants Officer on behalf of the Government. No other communications, whether oral or in writing, shall be binding on the parties.

**--- END OF SECTION D ---**

**SECTION E**  
**ATTACHMENTS**

<b><u>NO.</u></b>	<b><u>ATTACHMENT/EXHIBIT DESCRIPTION</u></b>	<b><u>PAGES</u></b>
<b>E.1.</b>	<b>Attachment E.1. Technical Specifications and Requirements Statement</b>	<b>01 - 17</b>
<b>E.2.</b>	<b>Application for Federal Assistance (SF 424) And Budget Information (SF 424C) (Dated 08 September 2003)</b>	<b>01 - 02</b>

**---ATTACHMENTS FOLLOW ---**